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SECRETARIAT
OF
THE ODISHA LEGISLATIVE ASSEMBLY
NOTIFICATION

The 11th December, 2015

No.12904/L.A.—The following Bill which has been introduced in the Odisha Legislative Assembly on the 11th December, 2015 is herewith published under rule 68 of the Rules of Procedure and Conduct of Business in the Odisha Legislative Assembly for general information.

THE ODISHA MUNICIPAL LAWS (SECOND AMENDMENT) BILL, 2015

A

BILL

FURTHER TO AMEND THE ODISHA MUNICIPAL CORPORATION ACT, 2003
AND THE ODISHA MUNICIPAL ACT, 1950.

BE it enacted by the Legislature of the State of Odisha in the
Sixty-sixth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Odisha Municipal Laws (Second Amendment) Act, 2015.

(2) It shall come into force on such date as the State Government may, by notification, appoint.

Short title and
commencement.

CHAPTER II
AMENDMENT TO THE ODISHA MUNICIPAL CORPORATION ACT, 2003

Amendment
of Section 71.

2. In the Odisha Municipal Corporation Act, 2003 (herein after referred to as the Corporation Act), in section 71, in sub-section (1), after clause (c), the following clause shall be inserted, namely:—

Odisha
Act 11
of 2003.

“(d) is so disqualified under the provisions contained in Chapter VIA of this Act.”

Insertion of
new chapter
VIA.

3. In the Corporation Act, after Chapter VI, the following Chapter shall be inserted, namely:—

“CHAPTER VIA

DISQUALIFICATION ON THE GROUND OF DEFECTION.

Disqualification
on the ground
of defection.

112A. (1) Subject to the provisions of sections 112B, 112C and 112D, a Corporator belonging to any political party, shall be disqualified for being such Corporator,—

- (a) if he has voluntarily given up his membership of such political party ; or
- (b) if he votes or abstains from voting in, or intentionally remains absent from, any meeting of the Corporation, in an election of its Mayor, Deputy Mayor or a vote of no confidence motion under section 20, contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by such political party in this behalf, without obtaining, in either case, the prior permission of such party, person or authority and such voting, abstention or absence has not been condoned by such political party, person or authority as the case may be, within fifteen days from the date of such voting, abstention or absence.

Explanation.— For the purposes of this sub-section,—

- (a) a person elected as a Corporator shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such Corporator;

- (b) a person elected as a Corporator otherwise than as a candidate set up by a political party shall be deemed to belong to the political party of which he becomes a member before the expiry of six months from the date of commencement of his term of office.

(2) An elected Corporator, who has been elected as such, otherwise than as a candidate set up by a political party shall be disqualified for being a Corporator, if he joins a political party after expiry of six months from the date of commencement of his term.

(3) Notwithstanding anything contained in the foregoing provisions of this section, a person who on the date of commencement of the Odisha Municipal Laws (Second Amendment) Act, 2015, is a Corporator shall,—

- (a) where he was a member of a political party immediately before such commencement, be deemed for the purposes to have been elected as a Corporator as a candidate set up by such political party ;
- (b) in any other case, be deemed to be an elected Corporator who has been elected as such otherwise than as a candidate set up by any political party, for the purpose of sub- section (2).

Disqualification
not to apply in
case of split.

112B. Where a Corporator makes a claim that he and any other Corporators of his political party constitute the group representing a faction which has arisen as a result of a split in his political party and such group consists of not less than one-third of the members of such political party,—

(a) he shall not be disqualified under sub-section (1) of section 112A on the ground,—

- (i) that he has voluntarily given up his membership of his political party ; or

(ii) that he has voted or abstained from voting in, or intentionally remained absent from, any meeting of the Corporation in an election of its Mayor, Deputy Mayor or a vote of no confidence motion under section 20, contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by such political party in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting, abstention or absence has not been condoned by such political party, person or authority, as the case may be, within fifteen days from the date of voting or such abstention or absence ; and

(b) from the time of such split, such faction shall be deemed to be the political party to which he belongs for the purpose of sub-section (1) of section 112A and to be his political party for the purpose of this section.

Disqualifica-
tion not to
apply in case
of merger.

112C. (1) A Corporator shall not be disqualified under sub-section (1) of section 112A, where his political party merges with another political party and he claims that he and any other Corporators of his political party,—

(a) have become members of such other political party, or as the case may be, of a new political party formed by such merger ; or

(b) have not accepted the merger and opted to function as a separate group, and from the time of such merger, such other political party or new political party or group, as the case may be, shall be deemed to be the political party to which he belongs for the purposes of sub-section (1) of section 112A and to be his political party for the purpose of this section.

(2) for the purposes of sub-section (1), the merger of the political party of a Corporator shall be deemed to have taken place if, and only if, not less than two-thirds of the Corporators of the political party concerned have agreed to such merger.

Explanation.— The expressions "such other political party" and "new political party" shall include a political party whether such political party has been recognised or not by the Election Commission of India as a National party or a State party in the State of Odisha under the Election Symbols (Reservation and Allotment) Order, 1968.

Decision as to
disqualification
on the ground
of defection.

112D. (1) A complaint that a Corporator has become subject to the disqualification under section 112A, may be made by the Corporator or political party to the Election Commission,—

- (a) in a case falling under clause (a) of sub-section (1) of section 112A, within fifteen days from the date the Corporator gives up the membership of his political party;
- (b) in a case falling under clause (b) of sub-section (1) of section 112A, within fifteen days after expiry of a period of fifteen days as specified therein;
- (c) in a case falling under sub-section (2) of section 112A, within fifteen days after he joins the political party.

(2) Where complaint is received under sub-section (1), the Election Commission shall decide the question of disqualification within thirty days from the date of such receipt and his decision shall be final.

Bar of
jurisdiction.

112E. Notwithstanding anything contained in any law, no court shall have jurisdiction in respect of matters connected with disqualification under this Chapter.”.

CHAPTER III

AMENDMENT TO THE ODISHA MUNICIPAL ACT, 1950

Amendment
of section
17

4. In the Odisha Municipal Act, 1950 (hereinafter referred to as the Municipal Act), section 17 shall be renumbered as sub-section (1) thereof and after sub-section (1), as so renumbered the following sub-section shall be inserted, namely:—

Odisha Act
23 of 1950.

“(2) A Councillor shall cease to hold office, if he is so disqualified under the provisions contained in Chapter IVA of this Act.”.

Insertion
of new
chapter IVA.

5. In the Municipal Act, after Chapter IV, the following chapter shall be inserted, namely:—

**“CHAPTER IV-A
DISQUALIFICATION ON THE GROUND OF DEFECTION**

Disqualification
on the ground
of defection.

46A. (1) Subject to the provisions of sections 46B, 46C and 46D a Councillor, belonging to any political party, shall be disqualified for being such Councillor,—

- (a) if he has voluntarily given up his membership of such political party ; or
- (b) if he votes or abstains from voting in, or intentionally remains absent from, any meeting of the Municipality in an election of its Chairperson, Vice Chairperson or a vote of no confidence under section 54, contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by such political party in this behalf, without obtaining, in either case, the prior permission of such party, person or authority and such voting, abstention or absence has not been condoned by such political party, person or authority, as the case may be, within fifteen days from the date of such voting, abstention or absence.

Explanation. — For the purposes of this sub-section,—

- (a) a person elected as a Councillor shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such Councillor;
- (b) a person elected as a councillor otherwise than as a candidate set up by a political party shall be deemed to belong to the political party of which he becomes a member before the expiry of six months from the date of commencement of his term of office;

(2) An elected Councillor who has been elected as such, otherwise than as a candidate set up by a political party shall be disqualified for being a Councillor if he joins a political party after expiry of six months from the date of commencement of his term.

(3) Notwithstanding anything contained in the foregoing provisions of this section, a person who on the date of commencement of the Odisha Municipal Laws (Second Amendment) Act, 2015 is a Councillor shall,—

- (a) where he was a member of a political party immediately before such commencement, be deemed for the purposes to have been elected as a Councillor as a candidate set up by such political party;
- (b) in any other case, be deemed to be an elected councilor who has been elected as such otherwise than as a candidate set up by any political party for the purpose of sub-section (2).

Disqualification
not to apply in
case of split.

46-B. Where a Councillor makes a claim that he and any other Councillors of his political party constitute the group representing a faction which has arisen as a result of a split in his political party and such group consists of not less than one-third of the members of such political party,—

- (a) he shall not be disqualified under sub-section (1) of section 46A on the ground,—
 - (i) that he has voluntarily given up his membership of his political party ; or
 - (ii) that he has voted or abstained from voting in, or intentionally remained absent from, any meeting of the Municipality in an election of its Chairperson, Vice-Chairperson or a vote of no confidence under section 54, contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by such political party in this behalf, without obtaining in either case, the prior permission of such

political party, person or authority and such voting, abstention or absence has not been condoned by such political party, person or authority as the case may be, within fifteen days from the date of voting or such abstention or absence ; and

- (b) from the time of such split, such faction shall be deemed to be the political party to which he belongs for the purpose of sub-section (1) of section 46A and to be his political party for the purpose of this section.

Disqualification
not to apply in
case of merger.

46C. (1) A Councillor shall not be disqualified under sub-section (1) of section 46A where his political party merges with another political party and he claims that he and any other Councillors of his political party,—

- (a) have become members of such other political party, or as the case may be, of a new political party formed by such merger ; or
- (b) have not accepted the merger and opted to function as a separate group, and from the time of such merger, such other political party or new political party or group, as the case may be, shall be deemed to be the political party to which he belongs for the purposes sub-section (1) of section 46-A and to be his political party for the purpose of the section.

(2) for the purposes of sub-section (1) of this section, the merger of the political party of a Councillor shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the political party concerned have agreed to such merger.

Explanation.— The expressions "such other political party" and "new political party" shall include a political party whether such political party has been recognised or not by the Election Commission of India as a National party or a State party in the State of Odisha under the Election Symbols (Reservation and Allotment) Order, 1968.

Decision as to
disqualification
on the ground
of defection.

16D. (1) A complaint that a Councillor has become subject to the disqualification under section 46A, may be made by the Councillor or political party to the Election Commission ,—

- (a) in a case falling under clause (a) of sub-section (1) of section 46A, within fifteen days from the date the Councillor gives up the membership of his political party;
- (b) in a case falling under clause(b) of sub-section(1) of section 46A within fifteen days after expiry of period of fifteen days as specified therein;
- (c) in a case falling under sub-section (2) of section 46A, fifteen days after he joins the political party.

(2) Where complaint is received under sub-section (1), the Election Commission shall decide the question of disqualification within thirty days from the date of such receipt and his decision shall be final.

Bar of
jurisdiction.

46E. Notwithstanding anything contained in any law, no court shall have jurisdiction in respect of matters connected with disqualification under this Chapter.”.

STATEMENT OF OBJECTS AND REASONS

Parliament have passed the Anti-Defection Law in 1985 by the Constitution (52nd Amendment) by inserting a schedule as Tenth Schedule to the Constitution of India. The main intent of the law way to combat “the evil of political defections” and strengthen the values of democracy.

2. The elections to all the categories of Municipal bodies like Municipal Corporations Municipalities and NACs of the State are being held in party lines as per section 74 of the Odisha Municipal Corporation Act, 2003 and section 10 of Odisha Municipal Act, 1950.

3. As per provisions of section-54 of the Odisha Municipal Act, 1950 and section-20 of the Odisha Municipal Corporation Act, 2003, no confidence against the Chairperson or the Vice-Chairperson or Mayor or Dy. Mayor can be moved after two years from the date of his/her election respectively. Taking advantage of this provision many no confidence motions are being moved against the Mayor or Deputy Mayor or Chairpersons or Vice-Chairpersons once the wait period is over i.e. completion of two years of term of Office. This results in poor urban governance due to lack of stability of the leadership. Many a time, the no confidence motion is moved by Corporators/Councillors of the same party by switching over party affiliations.

4. It aims at providing stability to the Institution of local self-government by preventing shifts of party allegiance and ensures that candidates elected with party support and on the basis of party manifestoes remain loyal to the party politics and also promotes party discipline. The Municipal bodies being third tier of Government require a better cohesion among the elected members as they are at the cutting edge of service delivery platform. The intra party bickering affect the decision taking ability of the leader. This results in poor urban governance due to lack of stability of the leadership.

5. For strengthening the urban local governance, now it is proposed to provide for necessary legal provisions for prohibition of defection by elected members of ULBs from the political parties by which they were up as candidates It is necessary to disqualify such elected members subject to certain exceptions i.e. in the case of a merger or split.

Therefore, it is considered expedient and accordingly proposed to prohibit defection by elected Councillors of a Municipal Council and Corporators of a Municipal Corporation from the parties by which they were set up as candidates by suitable amending the Odisha Municipal Act, 1950 and the Odisha Municipal Corporation Act. 2003.

The Bill seeks to achieve the above objectives.

PUSPENDRA SINGH DEO

Member-in-Charge

A.K. SARANGI

Secretary

Odisha Legislative Assembly